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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,413	09/28/2001	George G. Pappas	LUM 180	4358
7590	12/23/2003			
Frank H. Foster KREMBLAS, FOSTER, PHILLIPS & POLLOCK 7632 Slate Ridge Blvd. Reynoldsburg, OH 43068			EXAMINER COCKS, JOSIAH C	
			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/966,413

Applicant(s)

PAPPAS, GEORGE G.

Examiner

Josiah C. Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-22, and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed 10/24/03 is acknowledged.
2. Newly submitted claim 25 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: A method for more safely burning a freestanding candle fuel body and a freestanding candle are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the candle could be used in a materially difference process, such as a process of making a candle.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 25 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-13, 16, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850).

*Henze* discloses in Figure 1 a freestanding candle (2) having a wick (3), a flame-resistant sheet (insulator sheet 6) joined/attached to the fuel body in proximity to a lower end of the wick, and a wick support (4) contacting the sheet and holding the lower end of the wick (see Fig. 1).

*Henze* further discloses that the insulator layer (6) may be formed on the entire bottom surface of the wax candle/insert (2) (see col. 2, lines 23-28) and is regarded as being joined. The examiner considers that, as the sheet is a solid insulating layer, it would prevent leakage of melted candle wax onto a support surface.

*Henze* possibly does not disclose that the wick support is sealingly bonded to the sheet to create a liquid fuel flow barrier, has an adhesive backing, the wick support is formed *in situ* unitarily with the wick, a flame-resistant agent impregnating the lower end of the wick, or the wick support is above the sheet sufficient to prevent a candle fire and specifically at least about half an inch.

*Pappas* teaches a wick support (40) that is sealingly bonded to its support layer by means of a plug (24) forming a liquid fuel flow barrier that also functions to form a support that is formed *in situ* unitarily with the wick (see Fig. 7) and forms a flame resistant agent at the lower end of the wick (see col. 3, lines 38-48) and a wick support in the form of pedestal (90) that is attached to its support by adhesives (see col. 4, lines 38-41). *Pappas* further teaches that the wick support is high enough (i.e. at least half an inch) to prevent a candle fire (see col. 3, line 65 through col. 4, line 19).

In regard to claims 1 and 24, the limitation that the candle is not contained within a container are considered merely statements of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The internal candle (2) of *Henze* is a separate component from the container (5). This container simply serves as means of supporting and displaying the candle in the same way as the tray or dish disclosed in applicant's specification on page 8. Further, as noted in *Pappas*, it is well understood in the art that a "freestanding candle" may or may not be placed in a container surrounding the candle (see *Pappas*, col. 5, lines 5-6). A person of ordinary skill in art would understand that the candle (2) of *Henze* need not be placed in a container and could be placed on another support surface, such as a tray or dish, or to be placed on a table, which would form the support surface.

Therefore, in regard to claims 1, 3-13, 16, 17 and 24, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wick support of *Henze* to incorporate the structure of the wick support of *Pappas* as this structure serves to permit the wax to be consumed before flame goes out from lack of fuel and prevents an unsafe flashover condition (see *Pappas*, col. 1, lines 38-59).

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5. Claims 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Gentry* (US # 3,317,290).

*Henze* in view of *Pappas* teach all the limitations of claims 14, 15, and 18 except that the sheet has a peripheral rim and is corrugated.

*Gentry* teaches a heat resistant sheet that has a peripheral rim/flange (20) and is corrugated (14).

Therefore, in regard to claims 14, 15, and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet of *Henze* to incorporate the sheet of *Gentry* as the peripheral flange and corrugations serve to form an enlarged chamber for holding a combustible fuel body (see *Gentry*, col. 2, lines 16-38).

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Pietruch et al.* (US # 6,155,451).

*Henze* in view of *Pappas* teach all the limitations of claim 19 except that the sheet is dome-shaped.

*Pietruch et al.* teach a lower sheet (148a) that is dome-shaped (see Figs. 7-8).

Therefore, in regard to claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the sheet of *Henze* to incorporate the

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dome shape of *Pietruch et al.* as the dome configuration desirably results in a savings of total wax required (see *Pietruch et al.*, col. 8, lines 55-65).

7. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Hamblet* (US # 2,310,019).

*Henze* in view of *Pappas* teach all the limitations of claims 20 and 21 except for multiple wicks.

As shown in *Hamblet*, it is well known in the art that candles may have multiple wicks (22).

Therefore, in regard to claims 20 and 21, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the candle of *Henze* to incorporate the multiple wicks of *Hamblet* to provide greater light than a single candle (see *Hamblet*, col. 2, lines 8-15).

8. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Henze* (US # 4,917,597) in view of *Pappas* (US # 5,842,850) as applied to claim 1 above, and further in view of *Chambers et al.* (US # 5,961,318).

*Henze* in view of *Pappas* teach all the limitations of claim 22 except that the wick support is crimped.

*Chambers et al.* teaches a candle wick support that is crimped (see Fig. 2 and col. 3, lines 1-17).

Therefore, in regard to claim 22, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the wick support of *Henze* to incorporate the crimp of *Chambers et al.* for the desirable purpose of restricting the amount of fuel flow through the wick support to allow the wick to self-extinguish before the flame approaches the surface of a candle holder (see Abstract).

### ***Response to Arguments***

9. Applicant's arguments filed 10/24/03 in regard to claims 1, 3-22, 24, and 25 have been fully considered but they are not persuasive.

Applicant argues that the candle of *Henze* is not a "freestanding candle" because it incorporates a container. The term freestanding is simply a statement of intended use and does not define any specific structure. Further, the term "freestanding" is understood in the art to not exclude the use of a container surrounding the candle (see *Pappas*, col. 5, lines 5-6). As applicant notes on page 8, "freestanding" candles are often combined with a tray or a dish. In the *Henze* reference, while the inner candle portion (2) is being combined with an outer container (5), the inner candle portion (2) is separate from the container and is still regarded as a "freestanding" candle.

Applicant also argues that the heat resistance sheet of *Henze* would be superfluous outside of a container. However, the heat resistant layer serves as an insulator between the candle (2) and its support surface. This layer would function as an insulator regardless of the support surface in which the candle sits.



***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

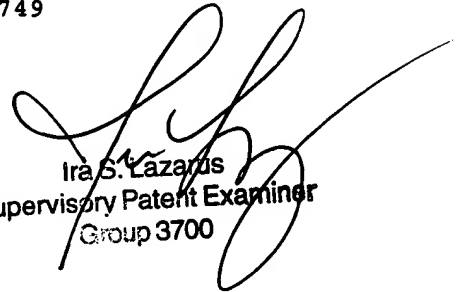
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
December 18, 2003



JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749



Ira S. Lazarus  
Supervisory Patent Examiner  
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